

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Case No. 02-CR-0013(2) (PJS/FLN)

Plaintiff,

v.

ORDER

TIMOTHY KEVIN McGRUDER,

Defendant.

Katharine T. Buzicky, UNITED STATES ATTORNEY'S OFFICE, for
plaintiff.

Timothy Kevin McGruder, pro se.

In 2002, defendant Timothy Kevin McGruder was convicted by a jury of murder in aid of racketeering after he and his fellow gang members opened fire on rival gang members, killing a four-year-old girl. ECF No. 141; ECF No. 327 at 1. He was sentenced to life imprisonment, a special assessment of \$100, and \$20,860 in restitution; he is jointly and severally liable for the restitution obligation with his two codefendants. ECF No. 170. McGruder was further ordered to pay his financial obligations in installments—specifically, not less than half of his monthly earnings if he is employed in a UNICOR job or not less than \$25 per quarter if he is employed in a non-UNICOR job. ECF No. 360-1 at 3.

This matter is before the Court on McGruder's "motion to modify judgement in lieu of restitution/fines payment." ECF No. 360 at 1. Although McGruder labels his

motion as one to “modify” his judgment—and although the Court has authority to modify a restitution order in response to “any material change in the defendant’s economic circumstances,” 18 U.S.C. § 3664(k)—McGruder does not, in fact, seem to be asking the Court to *modify* its judgment. McGruder does not identify—much less provide evidence of—a “material change” in his economic circumstances,¹ nor does he ask the Court to change any part of its restitution order. To the contrary, McGruder asks this Court to order the Bureau of Prisons (“BOP”) to “comply with” the terms of that order. ECF No. 364 at 1, 4.

McGruder’s specific grievance against the BOP is that, although the restitution order (as he interprets it) presently requires him to pay \$25 per quarter because he is not employed in a UNICOR job, the BOP is forcing him to pay \$80 per month through the Inmate Financial Responsibility Program (“IFRP”).² McGruder does not object to being required to pay \$25 per quarter; instead, he objects that the BOP is exceeding its

¹McGruder does say that he cannot work because there are no jobs for prisoners at his place of incarceration. But the judgment in his case requires him to make installment payments only if he is *employed*, either in a UNICOR or non-UNICOR job. ECF No. 360-1 at 3. Thus, his inability to work should not occasion the need to modify the judgment.

²“Under this program, BOP staff are required to help inmates who have outstanding financial obligations (including court-ordered restitution) to develop a plan to meet those obligations. *See* 28 C.F.R. § 545.11. Inmates who either refuse to participate in the IFRP or fail to comply with the provisions of their financial plan lose certain privileges. *See* 28 C.F.R. § 545.11(d).” *United States v. Bugh*, No. 98-CR-0308(2) (PJS), 2012 WL 3230530, at *1 (D. Minn. Aug. 6, 2012).

authority under the restitution order by forcing him to pay *more* than \$25 per quarter. Plainly, then, McGruder is challenging the execution of his sentence by the BOP.

McGruder's challenge faces two problems. First, McGruder has shown neither that he has exhausted his administrative remedies through the BOP nor that those remedies would be futile. *See United States v. Bugh*, No. 98-CR-0308(2) (PJS), 2012 WL 3230530, at *1 & n.1 (D. Minn. Aug. 6, 2012). Second, McGruder must challenge the BOP's execution of his restitution order by filing a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the district in which he is confined. *Matheny v. Morrison*, 307 F.3d 709, 711–12 (8th Cir. 2002) (holding that challenges to IFRP payment schedules are "correctly framed as § 2241 claims brought in the district where the sentence is being carried out"). McGruder is presently confined at USP McCreary, which is in the Eastern District of Kentucky. ECF No. 360 at 6; Fed. Bureau of Prisons, *USP McCreary*, <https://www.bop.gov/locations/institutions/mcr> (last visited Mar. 18, 2022).

In sum, if McGruder wishes to challenge the manner in which the BOP is executing his restitution order, he must first exhaust his administrative remedies, and

then he must file a § 2241 petition in the Eastern District of Kentucky.³ This Court does not have jurisdiction to consider any such challenge.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT defendant Timothy Kevin McGruder's "motion to modify judgement in lieu of restitution/fines payment" [ECF No. 360] is DENIED WITHOUT PREJUDICE.

Dated: March 18, 2022

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge

³The government asserts that McGruder could also bring his petition "in the District of Columbia or any district in which the BOP maintains a regional office." ECF No. 363 at 4 n.3 (citing *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 495–99 (1973)). The BOP does not maintain a regional office in Minnesota. *See* Fed. Bureau of Prisons, *BOP: Offices*, <https://www.bop.gov/about/facilities/offices.jsp> (click "Location Details" for each regional office) (last visited Mar. 18, 2022).